

SUBJECT: Creating a sales and use tax exemption for certain tangible property

COMMITTEE: Ways & Means — committee substitute recommended

VOTE: 11 ayes — Meyer, Thierry, Button, Craddick, Gervin-Hawkins, Hefner, Muñoz, Noble, Raymond, Shine, Turner

0 nays

WITNESSES: For — Kevin Hughes, Stack Infrastructure (*Registered, but did not testify*: Ray Sullivan, Amazon Web Services; Travis Krogman, Austin Chamber of Commerce; Robert Wood, CyrusOne; Jennifer Perkins, Dallas Regional Chamber; Tristan Castaneda Jr, Data Center Coalition; Andrew Wise, Microsoft; Annie Spilman, NFIB; Haynes Strader, Skybox Datacenters; Craig Casselberry, Stack Infrastructure; Megan Mauro, Texas Association of Business; Carlton Schwab, Texas Economic Development Council; Colette Vallot, Vantage Data Centers)

Against — (*Registered, but did not testify*: Julie Wheeler, Travis County Commissioners Court)

On — (*Registered, but did not testify*: Shannon Brandt, Comptroller of Public Accounts)

BACKGROUND: Some have suggested that Texas could encourage more cybersecure, resilient, and reliable data centers by establishing a more modernized incentive structure that includes an exemption from sales and use tax for tangible personal property for certain connected data center projects.

DIGEST: CSHB 3104 would authorize an exemption from sales and use tax for tangible personal property necessary and essential to the operation of a qualifying connected data center project if the tangible personal property had been purchased for installation at, incorporation into, or in the case of electricity, used in a qualifying connected data center project by a qualifying owner, qualifying operator, or qualifying occupant. The bill would specify tangible personal property that would qualify for the sales

and use tax exemption, and tangible personal property that would not qualify for the exemption.

Under criteria specified in the bill, a connected data center project could be certified by the comptroller as a qualifying connected data center project in order to receive the sales and use tax exemption. Certification could begin on or after September 1, 2023.

An eligible connected data center project would be required to apply to the comptroller for certification as a qualifying connected data center project and to receive a registration number or numbers.

The exemption would begin on the date the connected data center project received certification from the comptroller and if the qualifying occupant, qualifying owner, or qualifying operator independently or jointly made a capital investment of \$500 million or more, would expire on the 20th anniversary of the certification date.

Each person eligible to claim a tax exemption would be required to have a registration number issued by the comptroller. A purchaser would be required to provide the registration number on the exemption certificate to a seller of tangible personal property eligible for the exemption.

The comptroller would revoke all registration numbers issued in connection with a qualifying connected data center project that the comptroller determined did not meet requirements under the bill. Each person who had a registration number revoked by the comptroller would be liable for sales and use taxes, including penalty and interest from the date of purchase, on purchases for which the person claimed an exemption regardless of whether the purchase occurred before the date the registration number was revoked.

A connected data center project would not be eligible for the sales and use tax exemption if the project had been subject to an agreement that limited the appraised value of the center's property under former provisions of the Texas Economic Development Act.

The bill would add a connected data center project and a qualifying connected data center project to the list of uses for which no sales and use tax would be applied to electricity and gas.

Revisions made in the bill would not affect tax liability that accrued before the effective date. Liability would continue for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.

The bill would take effect September 1, 2023.